

E-FILED 07-12-2010

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

MEDIMMUNE, LLC,

No. C08-05590 JF (HRL)

Plaintiff,

v.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR ORDER SHORTENING
TIME**

PDL BIOPHARMA, INC.,

Defendant.

[Re: Docket No. 629]

For months, the parties have vigorously wrangled over myriad discovery disputes, a number of which have been set on a compressed schedule. In recent weeks, disputes arising in the course of the so-called "Phase II" discovery period have spawned no less than nine discovery motions before this court. In this, the eighth¹ in this flurry of time-consuming discovery disputes, defendant PDL Biopharma, Inc. (PDL) seeks leave to take up to 70 hours of depositions (excluding certain categories of depositions) and requests that the court resolve the matter on a dramatically truncated schedule. (In a footnote in its discovery motion, PDL states that more discovery motions are to come. See Docket 626 at 9 n.11). MedImmune opposes the motion for shortened time. The matter has been referred to this court for disposition.²

¹ The ninth motion, PDL's cross-motion for protective order, was filed shortly after MedImmune filed its opposition to the instant motion for shortened time.

² Although PDL cast its underlying motion as one to change the case management schedule, the relief it seeks pertains only to the number of depositions which may be taken. It is this court's understanding that the question whether discovery or other case management deadlines should be extended has not been referred to it.

1 Although PDL suggests that its underlying discovery motion “could be dispatched by
2 the Court in minutes” (Docket No. 629 at 3), this court simply cannot accommodate PDL’s
3 discovery motion on the shortened schedule PDL proposes.³ Indeed, even if this court were to
4 immediately set a hearing and issue a ruling in PDL’s favor, it is doubtful whether PDL could
5 accomplish the depositions it seeks before the July 20, 2010 fact discovery cutoff, the stated
6 reason for emergency. More to the point, the approaching July 20, 2010 cutoff is a deadline
7 that the presiding judge set months ago at PDL’s request. This court wonders why PDL is
8 raising this issue only now, with little more than one week left in the fact discovery
9 period—especially since the record presented indicates that the subject of deposition limits was
10 discussed between the parties months ago, with MedImmune suggesting a 10-deposition limit
11 and PDL apparently preferring to defer the matter. (See Berl Decl., Ex. 1 at 8).

12 Nevertheless, this court will set PDL’s discovery motion for hearing on August 10,
13 2010, 10:00 a.m. when the parties are scheduled to be before this court on a number of other
14 discovery disputes. MedImmune’s opposition shall be filed by July 20, 2010. PDL’s reply
15 shall be filed by July 27, 2010.

16 SO ORDERED.

17 Dated: July 12, 2010

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20 HOWARD R. LLOYD
21 UNITED STATES MAGISTRATE JUDGE
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27 ³ Given the recent barrage of discovery motions, and the past failures of the
28 parties to revolve their disputes informally, the parties may wish to seriously consider
whether it might be appropriate for a Special Master to be appointed to address future
disputes within the timeframe that the parties claim they need.

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